

Hearing for April 20, 2011 at 9:30 a.m.

10-20927F Susan J. Schofield #32 Relief from Stay
(HSBC Bank USA vs) +Resp by Debtor (pro se)
(Tee's Cert/Def to Dismiss: 7-7-11 @ 9:00 in Rm 3251 USS Tower)

Trustee: Bedford
HSBC - Gaertner
Schofield - here pro se as Debtor

SUMMARY: CREDITOR:

debtor's late husband got this property in 1980 for 18,000 and he died in 2004 and the estate issued a deed dated Aug 18, 2004 to Debtor indiv'ly

shortly after that, Debtor got a mortgage and it's not the best deal - arm with 10.5% original rate on 42,000 mortgage

Proof of Claim filed and has the mortgage attached - recorded - and the note and the assignment of the mortgage that is also recorded

Debtor filed first bankruptcy as a 7 in July 2006 and it was dismissed in Nov 2006 because filing fee not pd

then filed another 7 in May of 2007 and closed in Dec of 2008

this one filed as a 13 in Feb of 2010 and Debtor was represented then and attorney did plan to cure mortgage per original terms and Debtor made one payment and nothing more

so after long default, is seeking Relief from Stay

no equity - has appraisal of 38,000 with balance of debt now over 46,178

Trustee also pursuing certificate of default

Debtor filed new plan for plan payment of 15 per month

filed objection to this claim

filed response to the Relief from Stay that has the laundry list of allegations floating around on internet - everything from creation of trust to the assignment of the loan

Debtor also raised these issues in answer to the foreclosure complaint in state court prepetition but there was no judgment entered because the foreclosure was contested but motion for summary judgment was filed by creditor in that case contesting the issues and showing every document including the corporation authority of the people executing the assignment

there is no equity, no payments, no adequate protection

no reason why mortgage has to be relit'd here while also in the foreclosure case and abstention would be appropriate here

there is no merit to the allegations

there are 2 additional judgments - one sizeable - v Debtor and thought they'd have been avoided in a prior bankruptcy but they are still of record at this time

Relief from Stay is appropriate and litigation should go forward in state court and with in rem relief so the litigation can go on

Trustee - payments in March and April of 2010 and then not until 15.43 twice in April

plan payment is 931 per month and arrears are 8348.14

Debtor - wants to save the house but has no idea who HSBC is - never had any dealings with them and wants them to have the original bank note and mortgage - was plan payment plan before at 619 then up to 900+ and there is nothin doc'd v her by HSBC

if they have the original note and mortgage they should show it

HSBC has no office in the US

Creditor - HSBC as Trustee has servicing agreement with America Servicing as a unit of Wells Fargo and they aren't hard to find - doesn't have here where the address is for HSBC but the motion for summary judgment in the foreclosure goes into lots of detail and points out that a lot of what the court has heard today isn't

true - there have been efforts to work out forbearance agreements and back in Jan of 2009, bank got incomplete work out package and contacted Debtor several time to get the documents to review the workout options and when that didn't happen, they denied the request

then in Aug of 2009, offered her a repayment plan and that didn't happen and mortgage wasn't cured because she breached

then another loan modification was sent in Sept of 2009 and she didn't respond to that either - the motion for summary judgment is 38 paragraphs

OUTCOME - MODIFIED ORDER ENTERED

Judith K. Fitzgerald
ljm